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## Bristol Manor Health Care Center and 1199 SEIU, United Healthcare Workers East. Case 22–CA– 087652

# October 24, 2013 DECISION AND ORDER

# BY MEMBERS MISCIMARRA, HIROZAWA, AND SCHIFFER

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of a bilateral informal settlement agreement. Upon a charge filed by 1199 SEIU, United Healthcare Workers East (the Union) on August 17, 2012, the Acting General Counsel issued the complaint on October 9, 2012, against Bristol Manor Health Care Center (the Respondent) alleging that it violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer.

Subsequently, the Respondent and the Union entered into a bilateral informal settlement agreement, which was approved by Administrative Law Judge Steven Davis on December 4, 2012, after the hearing opened. Among other things, the settlement agreement required the Respondent to (1) furnish the Union with the information it requested on June 12, July 27, and August 17, 2012; and (2) post appropriate notices.

The settlement agreement also contained the following provision:

Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge, or if the Charging Party or Counsel for the General Counsel does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Board has sustained the Administrative Law Judge. The Agreement shall be remanded by the Administrative Law Judge to the Regional Director for securing compliance with its terms. The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on October 9, 2012 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint.

Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated April 12, 2013, the Regional Director for Region 22 notified the Respondent's attorney that the Respondent had provided some, but not all, of the information required by the settlement agreement. Thus, the Regional Director informed the Respondent that it had not yet produced, for the period beginning January 1, 2012, to the present, payroll records for LPNs, recreation aides, and housekeeping and dietary employees; schedules for LPNs, recreation aides, and housekeeping and dietary employees; explanation of payroll codes; and copies of time off request forms. The letter stated that unless the Region received all of the outstanding information by April 26, 2013, the Regional Director would revoke the settlement agreement and reissue the complaint. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on May 14, 2013, the Regional Director reissued the complaint, and the Acting General Counsel filed a Motion for Default Judgment with the Board. On May 15, 2013, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. On May 17, 2013, the Board issued an Order correcting the show cause response date. On May 29, 2013, the Respondent filed a response with an attached submission of documents. The Acting General Counsel and the Union filed replies to the Respondent's response; the Respondent and the Union filed additional responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Default Judgment

In its response to the Notice to Show Cause, the Respondent contends that the motion for default judgment

is moot because the documents attached to its response to the Notice to Show Cause, which consist of copies of time off request forms that employees submitted between December 2012 and April 2013, along with its prior submissions of information, "demonstrate that no employees have been harmed or deprived of any holidays pursuant to the Collective Bargaining Agreement."

Both the Acting General Counsel and the Union contend in their replies to the Respondent's response that the Respondent has not produced the documents required by the settlement agreement. The Respondent submitted another letter dated June 28, 2013, which asserts that the Respondent has provided "staffing schedules, employee ledgers, list of bargaining employees with accrued holidays, and payroll registers," and thus it has been "responsive" to the Union's information request, and that the information demonstrates that it has complied with the collective-bargaining agreement. Thereafter, the Union submitted a letter dated July 8, 2013, attaching a copy of a letter from the Union to the Respondent also dated July 8, 2013, outlining the information that the Respondent has not provided in response to the Union's information request.

Although the Respondent asserts generally that it has complied with each and every request made by the Union, the Respondent has not established that it has fully complied with the settlement agreement requiring disclosure, among other things, of each item of information requested in the Union's June 12, 2012 letter. Indeed, the Respondent does not directly dispute the assertions made by the Acting General Counsel and the Union that much of the information covered by the settlement agreement still has not been provided. Rather, the Respondent maintains that the information it has provided is "responsive" to the Union's request and, further, that this information demonstrates its compliance with the collective-bargaining agreement.

As noted above, the noncompliance provision in the settlement agreement provides that "[t]he only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement." As described, the Respondent has not shown that it has fully complied with that agreement. Further, the Respondent's assertion that the information already provided demonstrates its compliance with the collective-bargaining agreement is immaterial to the matter at issue here. The settlement agreement further provides that "[t]he Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings." Therefore,

in light of the undisputed assertions by the Acting General Counsel and the Union that the Respondent has not provided all of the required information and has not complied with the terms of the settlement agreement, we find that the Respondent has failed to raise any material issue of fact warranting a hearing.<sup>1</sup>

Accordingly, we grant the Acting General Counsel's Motion for Default Judgment and find, pursuant to the noncompliance provisions of the settlement agreement set forth above, that all of the allegations in the reissued complaint are true.<sup>2</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

#### I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation with an office and place of business in Rochelle Park, New Jersey (the Respondent's Rochelle Park facility), has been engaged in the business of operating a nursing home and rehabilitation center providing inpatient medical care.

During the 12-month period preceding reissuance of the complaint, the Respondent has derived gross revenues in excess of \$100,000 and purchased and received at its Rochelle Park facility goods and supplies valued in excess of \$5000 directly from suppliers located outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times Kristine Giles held the position of the Respondent's administrator and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All CNAs, dietary, housekeeping, recreational aides, LPNs, and all other employees; excluding professional

<sup>&</sup>lt;sup>1</sup> See, e.g., *Long Mechanical, Inc.*, 358 NLRB No. 98, slip op. at 2 (2012) (company's failure to respond to specific allegations that it had breached settlement agreement by failing to provide information, as set forth in Acting General Counsel's motion, and failure to come forward with anything specifically supporting its general denial that it had breached settlement agreement, warranted finding that the complaint allegations were true).

<sup>&</sup>lt;sup>2</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994). Also, pursuant to the noncompliance provisions, we find that the Respondent's answer to the original complaint has been withdrawn.

employees, registered nurses, cooks, confidential employees, office clerical employees, watchmen, guards and supervisors as defined in the Act.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 2010, until March 31, 2014.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 12, 2012, the Union has requested, in writing, that the Respondent furnish it with information described in the Union's June 12, 2012 letter:

- (a) Any and all documents describing holiday pay and all conditions for receiving holiday pay;
- (b) Any and all documents, including but not limited to correspondence, reflecting communications between the Respondent and the Union regarding holiday pay;
- (c) Work schedules from January 1, 2012 to the present, for all bargaining unit employees for each shift and department, showing all holidays worked and all days off granted in lieu of payment to an employee working on a holiday;
- (d) Completed "time off request" forms for all bargaining unit employees submitted from January 1, 2012 to the present; and
- (e) All documents, including but not limited to the payroll register, for all bargaining unit employees from January 1, 2012 to the present, showing all hours worked and paid, including pay for holiday pay.

The information requested by the Union, described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about June 12, 2012, the Respondent has failed and refused to furnish the Union with the information requested on that date.

In disposition of Case 22–CA–087652, the Respondent and the Union entered into an informal Board settlement agreement, which was approved by Administrative Law Judge Steven Davis on December 4, 2012.

Since about April 26, 2013, and continuously thereafter, the Respondent has refused to fully comply with the settlement agreement described above by refusing to furnish the Union with the information requested on June

12, 2012, and refusing to provide the Union with an explanation of certain payroll codes.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on June 12, 2012.

#### **ORDER**

The National Labor Relations Board orders that the Respondent, Bristol Manor Health Care Center, Rochelle Park, New Jersey, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with 1199 SEIU, United Healthcare Workers East as the exclusive collective-bargaining representative of the unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:
  - All CNAs, dietary, housekeeping, recreational aides, LPNs, and all other employees; excluding professional employees, registered nurses, cooks, confidential employees, office clerical employees, watchmen, guards and supervisors as defined in the Act.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Furnish the Union the information it requested on June 12, 2012.
- (b) Within 14 days after service by the Region, post at its Rochelle Park, New Jersey facility copies of the attached notice marked "Appendix." Copies of the notice. on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 12, 2012.
- (c) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 24, 2013

Philip A. Miscimarra,	Member
Kent Y. Hirozawa,	Member
Nancy Schiffer,	Member

# (SEAL) NATIONAL LABOR RELATIONS BOARD

#### **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 1199 SEIU, United Healthcare Workers East as the exclusive collective-bargaining representative of our unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the following employees in the collective-bargaining unit:

All CNAs, dietary, housekeeping, recreational aides, LPNs, and all other employees; excluding professional employees, registered nurses, cooks, confidential employees, office clerical employees, watchmen, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish the Union with the information it requested on June 12, 2012.

BRISTOL MANOR HEALTH CARE CENTER

<sup>&</sup>lt;sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."